

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL. No. 1827

Case No. C 09-5840 SI

This Order Relates to:

*Motorola Mobility, Inc v AU Optronics
Corporation, et al.*, C 09-5840 SI

**ORDER DENYING SAMSUNG SDI CO,
LTD.'S AND SAMSUNG SDI AMERICA,
INC.'S MOTION FOR SUMMARY
JUDGMENT ON MOTOROLA'S
CLAIMS**

Currently before the Court is the motion by Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI") for summary judgment on plaintiff Motorola Mobility's Sherman Act, breach of contract, and unjust enrichment claims. Pursuant to Civil Local Rule 7-1(b), the Court found this matter suitable for disposition without oral argument. Having considered the parties' papers, and for good cause appearing, the Court hereby DENIES SDI's motion.¹

SDI contends that Motorola's Sherman Act, breach of contract, and unjust enrichment claims—its first, seventeenth, and eighteenth claims, respectively—should be dismissed because there is no evidence that it conspired to fix the prices of the TFT-LCD modules it sold to Motorola.

When concerted price-fixing is alleged, the plaintiff bears the burden of presenting sufficient evidence to prove that an agreement to fix prices existed. *See, e.g., In re Citric Acid Litig.*, 191 F.3d 1090, 1093 (9th Cir. 1999); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 622 F. Supp. 2d 890, 896 (9th Cir. 2009). To survive summary judgment, a plaintiff must establish that there is a genuine

¹ The parties do not dispute that Motorola's breach of contract and unjust enrichment claims depend on the viability of Motorola's Sherman Act claim. Thus, in denying SDI's motion, all three of Motorola's claims survive summary judgment.

1 issue of material fact as to whether defendants entered into an illegal conspiracy that caused plaintiff
 2 to suffer a cognizable injury. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587
 3 (1986). A plaintiff can establish a genuine issue of material fact by producing either direct evidence of
 4 a defendant's price-fixing conduct or circumstantial evidence from which a reasonable fact finder could
 5 conclude the same. *In re Citric Acid Litig.*, 191 F.3d at 1093; *see also Sun Microsystems*, 622 F. Supp.
 6 2d at 896 (citing *Movie 1 & 2 v. United Artists Commc'ns*, 909 F.2d 1245, 1251-52 (9th Cir. 1990);
 7 *United States v. Gen. Motors Corp.*, 384 U.S. 127, 142-43 (1966)). The Ninth Circuit "has outlined a
 8 two-part test to be applied whenever a plaintiff rests its case entirely on circumstantial evidence." *Id.* at
 9 1094. "First, the defendant can 'rebut an allegation of conspiracy by showing a plausible and justifiable
 10 reason for its conduct that is consistent with proper business practice.' The burden then shifts back to
 11 the plaintiff to provide specific evidence tending to show that defendant was not engaging in permissible
 12 competitive behavior." *Id.* (internal citations omitted); *see also In re Tableware Antitrust Litig.*, 484
 13 F. Supp. 2d 1059, 1972 (9th Cir. 2007).

14 Despite SDI's attempt to offer "plausible and justifiable reasons" for many of its alleged
 15 communications with competitors, the Court finds that Motorola has provided evidence tending to show
 16 that SDI conspired with its competitors to artificially inflate the prices of LCD modules. *See id.* at 1093.
 17 SDI does not dispute that there is evidence demonstrating its alleged price-fixing communications with
 18 Epson regarding LCD modules the companies sold to their common customer, Nokia. *See Motion at*
 19 29 (citing SDI's discovery responses where it "admitt[ed] that in the period of 2004 to 2006, certain
 20 employees of [] SDI discussed LCD market information with certain employees of Epson/SEID,
 21 including on occasion price or volume information regarding certain Nokia projects"). Instead, SDI
 22 argues that there is no link between this evidence and Motorola's obligation to establish the elements
 23 of its Sherman Act claim as to SDI. SDI asserts that its competitor communications with Epson
 24 provides no evidentiary basis to prove that it "knew of and intended to participate in any conspiracy
 25 affecting Motorola." *Id.* at 28. While it may be correct that Motorola lacks direct evidence of
 26 "exchanges between SDI and any competitor regarding LCD supplier pricing information for Motorola
 27 projects," the Court finds that there is ample circumstantial evidence from which a reasonable jury could
 28 infer that SDI knowingly participated in the overarching price-fixing conspiracy. *See Continental Ore*

1 *Co v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962) (“Plaintiffs should be given the full
2 benefit of their proof without tightly compartmentalizing the various factual components and wiping the
3 slate clean after scrutiny of each. The character and effect of a conspiracy are not to be judged by
4 dismembering it and viewing its separate parts, but only by looking at it as a whole.”).

5 Next, SDI contends that the “Nokia evidence” cannot establish that SDI caused Motorola’s
6 alleged antitrust injuries. SDI argues that because the “LCD modules that [it] . . . provided to its
7 customers, including Nokia and Motorola, were customized and not interchangeable,” its
8 communications with Epson related to Nokia projects could not have affected the prices of the LCD
9 modules it sold to Motorola. Motion at 31. Motorola has presented evidence to the contrary. For
10 example, based on “shared market fundamentals,” Motorola’s damages expert Dr. Bernheim has opined
11 that the overall market prices for small-screen LCDs were largely correlated with the defendants’ small-
12 screen LCD sales prices. *See* Declaration of Nathaniel J. Wood, Ex. 98 (rebuttal expert report of Dr.
13 Bernheim). Viewing the evidence in a light most favorable to Motorola, the Court concludes that there
14 are triable issues of fact regarding whether SDI’s pricing to Nokia affected its pricing to Motorola.

15 For the foregoing reasons, the Court hereby DENIES SDI’s motion for summary judgment.
16 Master Docket No. 6306; Docket No. 411 in 09-5840.

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18 **IT IS SO ORDERED.**

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20 Dated: September 22, 2012



21 SUSAN ILLSTON
22 United States District Judge
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